

Mineral Interests on Your Land

A Guide for Landowners in Indiana and Illinois



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Introduction

This manual is meant to serve as a resource for landowners in Illinois and Indiana who wish to place their land under conservation easement but are concerned about preexisting mineral interests on all or part of their land. Such mineral interests make the creation of conservation easements more difficult, both by complicating the ownership status of the land and by threatening the future conservation values of the easements. This manual will discuss some steps that landowners can take to try to terminate or otherwise modify these mineral interests, making it easier to preserve the natural qualities of their land.

There are several different types of mineral interests that might exist on your land. The most basic and important distinction is between a **mineral lease**, where the holder of the mineral interest is simply leasing the interest from the landowner, and a **severed mineral estate**, where the holder actually owns the mineral rights to the land outright. It is also important to remember that the laws of Indiana and Illinois contain some important differences, so the steps required of you may be different depending on where your land is located. Keep these distinctions in mind as you read this manual.

IMPORTANT: This manual will provide you with general advice on how to identify and terminate mineral interests that exist on your land. However, this can be a complicated legal issue. Facts specific to your individual circumstances are often critical. It is never a bad idea to contact a good lawyer for advice; this manual will help you make good use of legal help. If you have questions about something in the manual, you can ask your NRCS representative to contact the Conservation Law Center for clarification.

Locating Your Documents

Before you take any action or make any decisions about the mineral interests on your property, you will need to locate the documents that created those interests in the first place. If your property is encumbered by a mineral lease, the document you need to find is the *lease agreement*, which will list the entity that holds the lease as “lessee” and the

owner of your property at the time the lease was created as “lessor.” If the mineral interest on your property is a severed mineral estate, then you will need to find the *deed* that created that estate, which will list the entity that owns the mineral estate as the “grantee” and the owner of your property at the time as “grantor.”

If you don't have the document you need in your files, read 1 and 2 below, otherwise, skip these sections.

1) You should be able to locate the documents you need at your county recorder's office. This office is almost always found in the county courthouse, and should have its own link on your county's webpage describing its hours and policies. Before you go to the recorder's office to find your document, gather any information you do have about the mineral interest on your property, including:

- Name of the entity that holds the interest
- Date it was created
- Date you purchased your property
- Names of past owners of your property

This information will help the recorder find your documents more quickly. Transactions involving mineral leases and severed mineral estates will often be cross-referenced on earlier recorded real estate documents, like the existing deed for the land at the time of the transaction. This means that the location of the documents you need could be handwritten in the margins of your deed, or electronically linked to your documents if your county recorder's office has switched to a digital system.

2) There will likely be someone in the recorder's office to help you locate your documents, but if not, or if the office is especially busy, you may want to try to locate them yourself. Different offices organize their many documents in different ways, but all will have what is called a *grantor-grantee index*. Most recorder's offices maintain two lists as part of the index, a list of property transactions organized by the last name of the grantor, or seller, of the property, and another list organized by the name of the grantee, or buyer. If you are looking for the recorded copy of your current deed, look

either in the grantor list for the last name of the person you bought the property from, or in the grantee list under your own last name. Likewise, if you want to find the deed for an earlier owner of the property, look for their name in the index using the same strategy. Keep in mind that the lists are not always in strict alphabetical order, sometimes depending more on the chronological order of the transactions. Once you find the deeds you are looking for, try to follow the cross-references mentioned above to the documents you need.

Mineral Leases

The first category of mineral interests that this manual will discuss is the mineral lease. Just like it sounds, a mineral lease exists where a landowner has agreed to lease the rights to some or all of the minerals present on the land to someone who intends to develop those minerals. If you believe that your land may be encumbered by a mineral lease, the first step you need to take is to obtain a copy of the lease agreement. If you don't have the lease agreement in your files, it can most likely be found on file at the county recorder's office as discussed above. Once you have located a copy of the lease agreement, it is time to consider which, if any, of the following methods of lease termination best fits your situation.

1) Voluntary Agreement

The most straightforward method for terminating a mineral lease is for the lessor and the lessee to come to a voluntary agreement to release the lease. If you can secure the written consent of the lessee to release the lease, no further legal action is required, apart from recording the release document with the recorder's office where your land is located. Depending on your individual situation, this may be the easiest way to free your land of the mineral interest. For a sample Release of Lease form, see Appendix A of this manual.

2) Termination by the Express Terms of the Lease

STATE LAW DISTINCTION – This section applies to **all** mineral leases in Illinois, and to **coal** leases in Indiana. In Indiana, termination of **oil and gas** leases for the reasons discussed in this section is governed by statute, and is covered later, in Section 5 below. However, **coal** leases in Indiana are not governed by statute, and so the information in this section applies to them as well.

Most mineral leases contain express terms that limit the duration of the lease. It is important to read your lease agreement, with an eye for clauses or provisions related to the termination of the lease. One common provision, known as a *habendum clause*, sets a length of time in which the lessee must begin to develop and produce the minerals. This term is often five years, though it can differ from lease to lease. If the producer (the lessee) does begin production within the term, most leases allow the lease to continue indefinitely as long as production continues, although once production ends the lease is terminated. However, if the term expires and the lessee has not begun production of the minerals, the lease may be terminated by its own express terms.

There are a few ways that a lessee can keep the lease active even without producing anything during the specified term. The lease may contain a *delay provision*, allowing the lessee to make rental payments to the landowner and thereby extend the time before mineral production is required. Also, the lease might contain a *savings clause*, which allows for an extension of time if the lessee drills a “dry hole” (a well containing no oil or gas). Most leases also include a *force majeure* clause, which makes it clear that the lessee isn’t accountable if it can’t produce because of problems beyond the lessee’s control, like natural disasters. Finally, some mineral leases contain provisions that *pool* a number of leases into a larger production unit. This means that if production of minerals is occurring anywhere within the larger unit, it may stop your lease from being forfeited even though no production is occurring on your land.

If no production of minerals has occurred on your land within the term specified in your lease agreement, and none of the above provisions extend that term, it is likely that the lease has been terminated by its own express terms. If you believe this to be the case,

the best way to proceed is to confirm the termination in writing by obtaining a release from the lessee, using the Release of Lease form found in Appendix A. If the lease has terminated, this step is not technically required, but obtaining written release will provide a measure of certainty and closure, and will avoid future complications.

If you cannot reach an agreement with the lessee to acknowledge the termination of the lease, it may be necessary to ask a court to decide whether the lease has indeed been terminated. Most likely you will need an attorney to assist you in making this decision, but there are a few factors to consider before pursuing this action. A court will require you to prove that there has been no mineral production by the lessee for the period of time specified in the lease. If yours is a situation where the lessee once produced but has since stopped, the court will require you to prove that the end of the lessee's production is permanent. If the lessee is actually producing minerals on your land, even in relatively small amounts, a court is likely to rule against you. Likewise, if the lessee can convince the court that it has only stopped its production temporarily and is working diligently to restart production, the court will probably rule against you. You should consider the terms of your lease agreement and the facts of your situation carefully before seeking a court's decision.

3) Termination for Lessee's Failure to Act Reasonably

Courts are fairly strict about limiting the application of this method of termination, so if you believe you might have a case under one of the other methods in the manual, you should pursue that first.

Even if your lease agreement contains no requirement for the lessee to begin to develop and produce minerals within a certain timeframe, or the timeframe provided has not yet expired, it may be possible to have the lease terminated if the lessee unreasonably delays development of its interest. Courts in both Indiana and Illinois are willing to terminate a lease agreement when the lessee takes an unreasonably long time to produce minerals after entering into an agreement with the landowner. This policy is meant to make sure that landowners don't have to wait too long to receive the benefit of their

agreement, which usually takes the form of royalty payments from the lessee's sale of minerals.

It is important to understand that this method of terminating the lease is not based upon the terms of the lease agreement, but rather on a court's determination of whether the lessee has acted reasonably. However, if the lease itself provides for some compensation for the landowner in the event that the lessee delays mineral production, such as *advance royalty* or *delay rental* payments, you probably won't be able to terminate the lease in this way. In other words, if your lease agreement allows you to collect some kind of payment from the lessee even if no minerals are produced from your land, a court probably won't find that the lessee has acted unreasonably.

Terminating a lease because the lessee has acted unreasonably requires court action, and therefore you should retain an attorney to assist you if you decide this option is best for you.

STATE LAW DISTINCTION – Courts in Indiana and Illinois have adopted slightly different ways of resolving the question of when a lessee has acted unreasonably in its development of the mineral interest.

If your land is in Indiana, a court will simply consider whether the lessee's actions were undertaken honestly and in good faith. This means that Indiana courts are more likely to defer to the judgment of the lessee in deciding when and how to develop the mineral interest. If your land is in Illinois, a court will apply a more complicated standard to decide your case, considering whether an ordinary person in the lessee's position would expect to profit from developing the minerals on the land. This standard tests the lessee's decision more objectively, but usually requires a showing that minerals exist on the land in profitable quantities in order to demonstrate that the lessee's failure to produce them was unreasonable. Whether you are in Indiana or Illinois, keep in mind that these standards are based heavily upon the facts of your individual situation, so it is important to consider these facts and the terms of your lease agreement before moving forward.

4) Abandonment

The doctrine of abandonment allows for mineral leases to be terminated when the lessee has demonstrated an intention to abandon its interest in the lease. Courts in both Indiana and Illinois are willing to terminate leases in this way. Determining whether a lessee intended to abandon its interest in the mineral lease usually comes down to the specific facts of your individual situation. If the lessee made a statement of its intent to abandon the lease, then proving abandonment will be easy. In this situation, however, it is likely that you will be able to terminate the lease by voluntary agreement, as discussed above, which will be much easier than going to court to prove abandonment. If the lessee made no such statement, it is still possible to establish abandonment if the lessee stopped its operations on your land for an unreasonable period of time. Just how long this must be differs from case to case, but is likely to be at least two years. In either case, terminating your lease because of the lessee's abandonment requires a court judgment, and therefore you should seek the advice of an attorney before proceeding. The facts required to show abandonment often overlap with the methods of termination discussed above, so be sure to consider your individual situation before deciding which method is right for you.

5) Termination by Statute – Indiana Oil and Gas Leases

If your land is encumbered by an oil and gas lease, and is located in Indiana, the simple steps required by the Indiana Cancellation of Contracts and Leases for Oil and Gas law may be your best option for terminating that lease.

The Indiana legislature has created special rules of termination for oil and gas leases that meet certain requirements. At its most basic, the Indiana Cancellation of Contracts for Oil and Gas law says that any lease for oil and gas is void, or terminated, if *either*:

- A year has passed since the last rental payment was made to the landowner as required by the lease, *or*
- Production and development of oil and gas has ceased for at least a year.

If either of these conditions apply to your oil and gas lease, then it is likely that you can terminate that lease under the terms of this Indiana statute. To complete the termination

of your lease, the statute requires you to file a written request and affidavit with the county recorder in the county where your land is located, stating that your lease meets the statutory requirements and requesting the recorder to terminate the lease. For a sample Request and Affidavit form, see Appendix B at the end of this manual. When filing this document, check with the county recorder to ensure it meets any recording requirements your county may have, and be prepared to pay a small recording fee (likely less than \$10).

The statute requires you to show that no rent has been paid to you by the lessee for one year, or in the alternative, that the lease has been in a state of both nonproduction and nondevelopment for one year. Under the statute, production means ordinary commercial production of oil and gas that results in the payment of royalties to the landowner. Development refers to activities such as repairs, maintenance, operation of the well, and other activities that demonstrate that the lessee is attempting to start or restart production. If the lessee has engaged in either production or development on your land within the last year, your lease is probably not eligible for termination under the statute. After you file the written request and affidavit, the lessee has the right to appeal the termination of the lease by filing its own affidavit with the county recorder, or by appealing the cancellation of the lease in court. As always, be sure to consider the facts of your individual situation before deciding to terminate your lease.

6) Information on Terminated Leases – Illinois Mineral Leases

Unlike Indiana, no independent statutory method exists in Illinois for terminating mineral leases. However, the Illinois Mineral Lease Release of Record Act does provide a mechanism for compelling lessees to make public the expiration of their mineral leases. The statute requires lessees whose mineral leases have expired to alert the county recorder's office of the termination of the lease. If your land is located in Illinois and you believe that your mineral lease may have already expired, you can notify the lessee of its duty to release this information by sending written notice through certified mail. For a sample of a Mineral Lease Release of Record Notice, go to Appendix C of this manual.

Severed Mineral Estates

The second category of mineral interests discussed in this manual is the severed mineral estate. A severed mineral estate represents a separate real estate interest in the minerals on your land, which the owner can convey by deed and which, apart from the methods of termination discussed below, lasts forever. Just as you have the right to enter onto your land, build structures on it, and otherwise enjoy your property rights, so too the owner of the subsurface mineral estate can explore, develop, and engage in other activities related to the minerals on your land. Because the severed mineral estate is a more permanent property interest than the mineral lease, the methods of termination are different, and often more difficult to achieve. Some require the landowner to engage in development and production of minerals in place of the mineral interest owner, making such solutions unsuitable for the purpose of establishing conservation easements. One thing that all the methods of termination have in common is their focus on the amount of time that the severed mineral estate has remained unused by its owner. This means that it is important for you to learn as much as you can about when the mineral estate was created and how it has been used since its creation. Like mineral leases, documents related to the creation of mineral estates are likely on file at the county recorder's office.

1) Voluntary Agreement

As with mineral leases, the most straightforward method of regaining title to a severed mineral estate is by voluntary agreement with the owner of the estate. It will not always be feasible to do so, especially if the owner of the estate is unknown or unavailable, but if you can secure a written agreement to transfer title to the mineral estate to you, no further legal action will be required, apart from recording the deed with the recorder's office in the county where your land is located. For a sample Quitclaim Deed by which this transfer can be achieved, see Appendix D of this manual.

2) Adverse Possession

Adverse possession is a legal doctrine that allows one person to gain ownership of another person's property by acting as the owner of the property would while excluding the true owner for a long period of time. Courts in Indiana and Illinois both recognize the doctrine of adverse possession, though there are some technical variations in the way they apply the law. The most important difference between the two states is that Illinois courts require the acting owner to maintain continuous possession of the property for 20 years, while Indiana courts require only 10 years of possession. Once someone has met the requirements of adverse possession for long enough, the title to the property in question automatically passes to the new owner. However, it is often necessary to bring a court action to "quiet title" to the property in question in order to establish with certainty that title has passed in this way. If uncontested by the holder of the mineral estate, a quiet title action will likely take between four and six months to complete. If the holder does contest your action, the proceedings can easily exceed one year, requiring significant legal fees.

Landowners can gain title to severed mineral estates through adverse possession of the subsurface mineral estate. However, courts in Indiana and Illinois agree that to achieve this, the landowner must treat the mineral estate in the way the true owner would, including exploration or development of the minerals present on the land. This requirement is likely to render adverse possession useless to you as a landowner seeking to establish a conservation easement on your land, since the required activities are likely to be at odds with the conservation values of the land. In the unlikely event that you have undertaken exploration or development of the mineral estate to the exclusion of the true owner, and this has gone on for 10 or 20 years depending on where your land is located, you may have a claim to the mineral estate through adverse possession. If this is the case, it is important that you consult an attorney in order to decide if court action is required to finalize the transfer of title.

3) Indiana Mineral Lapse Act – Termination of Unused Estates

In Indiana, the Mineral Lapse Act provides landowners with an alternative method for terminating mineral estates on their land that are unused or have not been used for a long time. Under the Act, mineral interests are automatically terminated if they go unused by the owner for a period of 20 years, although the owner can save its interest from terminating by filing a statement of claim to the interest with the county recorder. When these elements are satisfied and no statement of claim has been filed, ownership of the mineral estate returns to the surface landowner. Although this may seem a lot like the doctrine of adverse possession, there are two important differences. First, the required time period is increased from 10 to 20 years, and second, the landowner is not required to develop the minerals or take any other action for the statute to take effect.

“Use” of the mineral estate is clearly defined in the statute as one or more of the following five things: 1) production of minerals, 2) storage, disposal, or injection of fluids, 3) payment of rentals or royalties, 4) for solid minerals, production from a common vein not on the landowner’s property, or 5) payment of taxes on the mineral estate. If the owner of the mineral estate on your property has not engaged in any of these activities, the mineral estate can be considered unused for the purposes of the Act. If this continues for the statutorily required 20 years, and no statements of claim are on file at the local county recorder’s office, then you will be able to reacquire title to the mineral estate.

If you believe that the mineral estate on your land meets these requirements, there are two steps remaining for you to finalize the termination of the mineral estate:

1) The first step is to give notice of the termination to the owner of the mineral estate. This is not always required, but giving notice can help you avoid complications and loopholes present in the Act. To give notice, you should publish a short statement in the newspaper of the county where your land is located, including the name of the owner of the mineral estate, your name, and a description of your land. Once this is done, you should mail a copy of this notice to the address of the mineral estate owner, if known.

2) After notice has been given, the next step is to file an affidavit with the county recorder explaining that the mineral estate on your land has lapsed for lack of use

under the Act. A sample of a Mineral Lapse Act Affidavit is available at Appendix E of this manual. The owner of the mineral estate has six months after you file the affidavit to respond in order to preserve its interest, and if no such response is received, the county recorder will recognize the interest as having terminated. In situations like this, the holder of the mineral interest rarely makes any response to the affidavit. When filing this document, check with the county recorder to ensure it meets any recording requirements your county may have, and be prepared to pay a small recording fee (likely less than \$10).

4) Illinois Severed Mineral Interest Act – Unknown or Missing Owners

Illinois provides a statutory scheme for landowners to terminate unused mineral estates that is somewhat more complicated and less favorable than its Indiana counterpart. The Illinois Severed Mineral Interest Act provides two avenues for landowners to take when the mineral estate on their land goes unused and the owner of the estate is unknown or missing. The first, which involves the appointment by a court of a trustee to handle the leasing and development of the mineral estate, is unlikely to be helpful for landowners hoping to establish conservation easements on their land, for the simple reason that it requires the development and production of the mineral estate by a third party.

The second, which is the Act's version of the doctrine of adverse possession, is more favorable, as it doesn't require the mineral estate to be developed or leased to a third party. Also, the waiting period can be much shorter than the 20 years required under the ordinary Illinois doctrine of adverse possession. However, it still requires a court proceeding, and therefore you should hire an attorney to assist you if you decide to take action under this part of the Illinois Severed Mineral Interest Act. During this court proceeding, you will be required to demonstrate that the owner of the mineral estate is unknown or missing, meaning that the owner cannot be found after a search of the county property records and an inquiry as to the owner's last known address. If the unknown owner fails to appear or otherwise respond after the court clerk gives notice of the action, then the court will appoint a person to represent the unknown owner for the rest of the proceeding. After this, you must file a motion with the court to terminate the separate

mineral estate, again stating among other things that the owner of the mineral estate cannot be found. When you will be allowed to file this motion depends on when the original mineral estate was separated from your land. If the estate was created more than 20 years before you began the court action, then you must wait only one year to file the motion. If the mineral estate was less than 20 years old when you began the action, then you must wait seven years to file your motion with the court. In either case, if the missing owner has not appeared by the time you file your motion, the court will grant you title to the mineral estate through adverse possession. Samples of the court documents you must file under the Act can be found at Appendices F and G of this manual.

Appendices

Appendix A

Release of Lease

The undersigned, in consideration of \$1.00 cash, and other valuable considerations, receipt of which is acknowledged, hereby releases, relinquishes, cancels, surrenders, and forever quitclaims to *[name of lessor(s)]*, and to *[his/her/their]* heirs or assigns, any and all rights now held or claimed by the undersigned under the following-described *[type of lease]* lease, dated *[enter date]*, executed by *[name of original lessee(s)]* and *[name of original lessor(s)]*, recorded in volume *[insert #]*, page *[insert #]* of the Deed Records of *[name of county]* County, *[select state]*, and covering *[insert #]* acres of land, more or less, described as follows:

[legal description of land].

Executed this *[enter #]* day of *[month]*, *[insert year]*.

[Insert Name]

[Note: This form can be modified for use by a corporate lessee by replacing “The undersigned” with “(Name of Corporation), a (state) corporation.” The signature line should also be updated to indicate the title of the corporate officer executing the release.]

Appendix B

Written Request for Voiding of Oil and Gas Lease

STATE OF INDIANA)
)
COUNTY OF *[Insert County]*)

[Insert Name of Lessor] files this written request to void an oil and gas lease on *[his/her/their]* land located in *[Insert Name of Lessor]*, Indiana, pursuant to the Cancellation of Contracts and Leases for Oil and Gas Act, IND. CODE § 32-23-8-1 et seq.

Affidavit of Non-Production and Non-Development

BEFORE ME, the undersigned authority, on this day personally appeared *[Name of Affiant]*, Affiant, who being first by me duly sworn, deposed and stated as follows:

1. Affiant is the lessor referred to in an oil, gas, and mineral lease dated *[Insert Date]*, recorded in Volume *[Insert #]*, page *[Insert #]*, of the official records of *[Name of County]*, Indiana, which lease was executed to *[Insert Name of Lessee]*, lessee, and covers the following-described lands: *[Legal Description of Land]*.
2. Affiant is personally familiar with the use and occupation of the above-described tract of land, being the owner in fee simple to the tract. *[He/She]* has regularly observed said land for the past *[Insert #]* years.
3. On *[Insert Date]*, under the terms of such lease, there should have been paid to affiant or deposited to *[his/her]* credit in *[Name of Bank]* at *[Address]*, *[City]*, *[Name of County]* County, Indiana, \$*[Amount of Money]*, the payment of which was necessary in order to keep the above-described lease in force and effect.
4. The above-mentioned payment has never been made to affiant or to *[his/her]* representatives, in money or otherwise, nor has it been deposited to *[his/her]* credit in the above-mentioned bank.
5. There has been no drilling or development of any nature or kind whatsoever done on the land covered by the lease referred to, as called for under the terms of the lease, since *[Insert Date]*.

[Name of Affiant]

Affidavit of Banker

STATE OF INDIANA)

)

COUNTY OF *[Insert County]*)

I, *[Name]*, *[Title of Banker]* of *[Name of Bank]*, located at *[Insert Address]*, *[City]*, *[County]* County, Indiana, being first duly sworn, on my oath declare that there has not been deposited to the credit of *[Name of Lessor]* in such bank, by *[Name of Lessee]* or any other party, any sum of money whatsoever, in payment of rental under the terms of the oil, gas, and mineral lease referred to above.

[Name of Banker]

SUBSCRIBED AND SWORN TO before me this *[Insert #]* day of *[Insert Month]*, *[Insert Year]*.

My Commission Expires: *[Insert Date]*

[Name of Notary Public]
Notary Public

Appendix C

Mineral Lease Release of Record Notice

[*Address of Sender*]

[*Insert Date*]

CERTIFIED MAIL

[*Address of Sender*]

Dear [*Name of Lessee/Grantee*]:

I, the undersigned owner of the following-described land situated in [*Name of County*] County, Illinois:

[*Legal Description of Land*]

on which a mineral lease was given to you dated [*Insert Date of Lease*], notify you by this instrument that such lease terminated and that I elect to declare, and do declare, such lease forfeited and void for nonproduction, and that unless, within sixty (60) days from the mailing of this notice, you notify the Recorder of Deeds of such county, as provided by law, that such lease has been forfeited or has expired, I will file a complaint in the Circuit Court of [*Name of County*], Illinois and demand that you execute, or cause to have executed, a proper surrender of such lease as required by the Mineral Lease Release of Record Act, 765 ILL. COMP. ST. 510/.01–2.

Sincerely,

[*Name of Lessor*]

Appendix D
QUITCLAIM DEED

Quitclaim deed, made by *[name of transferor, i.e. the owner of the mineral estate]*, of *[insert address]* (“transferor”), to *[name of transferee, i.e. the owner of the surface estate]*, of *[address of transferee]* (“transferee”).

Transferor, in consideration of \$1.00 paid to transferor by transferee, receipt of which is acknowledged, releases and forever quitclaims to transferee, transferee's heirs, and assigns, all rights, title, and interest owned, claimed, or held by transferor in and to the mineral rights and interest in and to real property located in *[name of county]* County, *[name of state]*, recorded in Volume *[Insert #]*, Page *[Insert #]* of the Recorder’s Office, and more particularly described as follows:

[description of real property].

This quitclaim deed has been executed by transferor this *[insert #]* day of *[insert month]*, *[insert year]*.

[name of transferor]

Appendix E

Mineral Lapse Act Affidavit

STATE OF INDIANA)
)
COUNTY OF *[Insert County]*)

BEFORE ME, the undersigned authority, on this day personally appeared [Name of Affiant], Affiant, who being first by me duly sworn, deposed and stated as follows:

[Name of Deponent], of [Street Address], [City], [Name of County]County, Indiana, being first duly sworn, deposes and says that:

1. Deponent is the owner of certain lands situated in [*Name of County*] County, Indiana, and more particularly described as follows: [*Insert Legal Description*].
2. On [*Insert Date*], [*Name of Grantor*], as grantor, executed a deed to grant an interest in the mineral estate of the above-described lands to [*Name of Grantee*], as grantee, which deed was recorded on [*Insert Date*], in the Recorder's Office of [*Name of County*] County, Indiana, in Volume [*Insert #*], page [*Insert #*].
3. The above-named grantee and [*his/her/its/their*] successors and assigns have failed to "use" the mineral interest, as that term is defined by the Mineral Lapse Act, IND. CODE 32-23-10, for at least the past twenty (20) years. Deponent has personal knowledge of the use and occupation of the above-described tract of land, being the owner in fee simple to the tract. [*He/She*] has regularly observed said land for at least the past [*Insert #*] years. Specifically, deponent declares that, in the past twenty (20) years, grantee and [*his/her/its/their*] successors and assigns have not:
 - (a) produced any minerals from the above-described lands or from a unitized pool;
 - (b) conducted any operations on the above-described lands for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances from the above-described lands or from a unitized pool;
 - (c) produced any coal or other solid minerals from the above-described lands or from a common vein or seam;
4. Deponent has examined the records in the Recorder's Office of [*Name of County*] County, Indiana, and has found no statement of claim to the mineral interest filed by the grantee or [*his/her/its/their*] successors and assigns in the past twenty (20) years.
5. Deponent has made a diligent effort to examine public records and has found no indication that grantee or [*his/her/its/their*] successors and assigns have paid taxes on the mineral interest in the past twenty (20) years.
6. Deponent has provided notice to the grantee of the extinguishment of [*his/her/its/their*] rights to the mineral interest both by publishing notice in [*Name of Newspaper in County*]

Where Mineral Interest is Located] and by mailing a copy of the notice within 10 days of its publication, on *[Insert Date of Mailing]* to the grantee's address *[as shown on record/as determined upon inquiry by the deponent]*, *[Insert Address]*.

7. The above-mentioned mineral interest held by grantee is automatically extinguished for non-use under the Mineral Lapse Act, IND. CODE 32-23-10. Deponent, as owner of the land described above, now claims that such mineral interest is null and void and of no further legal effect, and the above-named grantee and *[his/her/its/their]* successors and assigns have no further rights under the deed.

I declare under penalty of perjury the foregoing to be true and correct.

[Name of Deponent]

SUBSCRIBED AND SWORN TO before me this *[Insert #]* day of *[Insert Month]*, *[Insert Year]*.

My Commission Expires: *[Insert Date]*

[Name of Notary Public]
Notary Public

Appendix F

Severed Mineral Interest Act Complaint

[Name of Circuit Court (of county where severed mineral interest is located)]

[Name of Plaintiff],

Plaintiff,

No. [Insert Docket #]

v.

[Name of Defendant] and all [his/her/their] heirs, successors,
and assigns,

Defendants.

COMPLAINT

Plaintiff, [Name of Plaintiff], files this complaint and states the following:

1. Plaintiff is a resident of [Name of County], Illinois. Plaintiff is the owner in fee simple of an undivided interest in the surface estate of real property located in [Name of County], Illinois, more particularly described as follows: [Legal Description of Property]. No other person holds a legal interest in the above-described surface estate.

2. On [Date of Severance of Mineral Interest], [Insert Name of Person Who Granted Severed Interest to Defendant] executed and delivered to defendant title in fee simple to the mineral estate underlying the plaintiff's surface estate in [Name of County], Illinois, and more particularly described as follows: [Legal Description of Property]. The deed to the severed mineral estate is recorded in Volume [Insert Volume #], Page [Insert Page #], of the Deed Records of [Name of County], Illinois, and reference is made to such records for all purposes.

3. The defendant is now missing and [his/her/their] current address, residence, and whereabouts cannot be determined upon plaintiff's due and diligent inquiry. The last known [address/residence/whereabouts] of the defendant was [Insert Address/Residence/Whereabouts]. The plaintiff has attempted to determine the defendant's current [address/residence/whereabouts] by checking [Insert discussion on the "sources of information which plaintiff has checked" to make such a determination.]

[Note: The Act also applies to "unknown" defendants. Paragraphs 2 and 3 should be modified accordingly if the owner of the severed mineral interest is unknown (and not "missing").]

4. Plaintiff desires to acquire title to the above-described mineral estate by adverse

possession under the Severed Mineral Interest Act, 765 ILL. COMP. ST. 515/11.

WHEREFORE, plaintiff requests:

1. Defendants be cited to appear and answer;
2. Plaintiff have judgment entered declaring [*him/her/them*] to be in presumptive adverse possession of the above-described mineral estate; and
3. Such other and further relief as the court deems just and proper.

I declare under penalty of perjury the foregoing to be true and correct.

[*Name of Plaintiff*]

Date: [*Insert Date*]

Appendix G

Severed Mineral Interest Act Motion

[Name of Circuit Court (of county where severed mineral interest is located)]

[Name of Plaintiff],
Plaintiff,

No. [Insert Docket #]

v.

[Name of Defendant] and all [his/her/their] heirs, successors,
and assigns,

Defendants.

MOTION

Plaintiff, [Name of Plaintiff], files this motion in the matter of No. [Insert Docket #]. Plaintiff moves for a declaration that defendants mineral interests are null and void, supported by the following:

1. Plaintiff is a resident of [Name of County], Illinois. Plaintiff is the owner in fee simple of an undivided interest in the surface estate of real property located in [Name of County], Illinois, more particularly described as follows: [Legal Description of Property]. No other person holds a legal interest in the above-described surface estate.
2. On [Date of Severance of Mineral Interest], [Insert Name of Person Who Granted Severed Interest to Defendant] executed and delivered to defendant title in fee simple to the mineral estate underlying the plaintiff's surface estate in [Name of County], Illinois, and more particularly described as follows: [Legal Description of Property]. The deed to the severed mineral estate is recorded in Volume [Insert Volume #], Page [Insert Page #], of the Deed Records of [Name of County], Illinois, and reference is made to such records for all purposes.
3. Pursuant to the Severed Mineral Interests Act, 765 ILL. COMP. ST. 515/11, plaintiff filed a Complaint against the defendant on [Insert Date of Complaint]. This Court granted judgment in favor of presumptive adverse possession in the plaintiff on [Insert Date of Judgment].
4. The defendant remains missing and has been missing since before plaintiff filed the complaint on [Insert Date of Complaint]. The defendant's current address, residence, and whereabouts still cannot be determined upon plaintiff's due and diligent inquiry. The last known [address/residence/whereabouts] of the defendant was [Insert Address/Residence/Whereabouts]. The plaintiff has attempted to determine the defendant's current [address/residence/whereabouts] by checking [Insert discussion on the "sources of

information which plaintiff has checked” to make such a determination].

[Note: The Act also applies to “unknown” defendants. Paragraph 4 should be modified accordingly if the owner of the severed mineral interest is unknown (and not “missing”).]

5. Severance of the mineral estate took place [*less than/more than*] twenty (20) years before the filing of the complaint by plaintiff. Accordingly, the plaintiff waited more than [*one (1) year/seven (7) years*] to file this motion after judgment was entered by this Court in favor of presumptive adverse possession by the plaintiff.

WHEREFORE, plaintiff requests:

1. Defendants be cited to appear and answer;
2. Plaintiff have judgment entered declaring that the above-described severed mineral interests are null and void due to adverse possession by the plaintiff, and that fee title to such severed mineral interests vests with the plaintiff; and
3. Such other and further relief as the court deems just and proper.

I declare under penalty of perjury the foregoing to be true and correct.

[*Name of Plaintiff*]

Date: [*Insert Date*]